

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

EMMANUEL LEWIS BEATY,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:21-CV-210-WHA
)	
H & W TIRE and AUTO, et al.,)	
)	
Defendants.)	

ORDER

This case is before the court on a complaint filed by the plaintiff under 42 U.S.C. § 1983. On March 22, 2021, the Magistrate Judge entered a Recommendation, Doc. #6, that the complaint be summarily dismissed. On April 7, 2021, the plaintiff filed objections to the Recommendation. Doc. 7. In his objections, the plaintiff objects to the dismissal of his claims against Stanley Garrett, an officer employed by the Opelika Police Department at time relevant to the complaint, as barred by the two-year statute of limitations applicable to 42U.S.C. § 1983 actions filed in this court. He contends that a six-year statute of limitations under Alabama law should govern. However, as pointed out in the Recommendation, the governing statute of limitations for claims raised in § 1983 actions is the forum state's general or residual statute of limitations for personal injury actions, *Owens v. Okure*, 488 U.S. 235, 249–250 (1989); *Lufkin v. McCallum*, 956 F.2d 1104, 1105 (11th Cir. 1992), and this limitations period is two years. *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008); *Ala. Code* § 6-2-38(l).

After an independent review of the file, the objections filed by the plaintiff and the Recommendation, it is ORDERED that:

1. The plaintiff's objections are OVERRULED.
2. The Recommendation of the Magistrate Judge is ADOPTED.
3. This case is summarily DISMISSED with prejudice in accordance with the directives of 28 U.S.C. § 1915(e)(2)(B)(i) as the claims presented in the complaint are barred by the applicable statute of limitations.
4. The plaintiff's claims against Mike Thrower, Patrick Thrower and a car salesman are likewise dismissed with prejudice prior to service of process pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii).
5. The plaintiff's claims against former District Attorney Brandon M. Hughes, Assistant District Attorney Cathey Berardi and Assistant District Attorney Jessica L. Ventiere for actions undertaken while representing the State in criminal proceedings before the Circuit Court of Lee County, Alabama are also DISMISSED with prejudice in accordance with the directives of 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii) because these defendants are entitled to prosecutorial immunity on such claims.
6. Judgment is GRANTED in favor of the defendants.
7. This case is DISMISSED with prejudice.
8. Other than the filing fee assessed to the plaintiff in this case, no costs are taxed.

A separate Final Judgment will be entered.

DONE this 9th day of April, 2021.

/s/ W. Harold Albritton

SENIOR UNITED STATES DISTRICT JUDGE